

## SENATE BILL No. 293

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-42-2-6; IC 35-45-16; IC 35-50-5-3.

**Synopsis:** Battery by body waste. Makes it battery by body waste, a Class A misdemeanor, for a person to place body waste on another person. Makes it malicious mischief, a Class B misdemeanor, for a person to place body waste where there is a risk that another person will come into contact with the waste. Establishes enhanced penalties if the waste is infected with disease. Permits a trial court to order restitution for the costs of testing to determine whether a victim has become infected as a result of the crime.

**Effective:** July 1, 2002.

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January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 293

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-42-2-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) As used in this  
3 section, "corrections officer" includes a person employed by:  
4 (1) the department of correction;  
5 (2) a law enforcement agency; or  
6 (3) a county jail.  
7 (b) As used in this section, "human immunodeficiency virus (HIV)"  
8 includes acquired immune deficiency syndrome (AIDS) and AIDS  
9 related complex.  
10 (c) A person who knowingly or intentionally in a rude, insolent, or  
11 angry manner places blood or another body fluid or waste on a law  
12 enforcement officer or a corrections officer identified as such and while  
13 engaged in the performance of official duties or coerces another person  
14 to place blood or another body fluid or waste on the law enforcement  
15 officer or corrections officer commits battery by body waste, a Class D  
16 felony. However, the offense is:  
17 (1) a Class C felony if the person knew or recklessly failed to



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know that the person was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) a Class B felony if:

- (A) the person knew or recklessly failed to know that the person was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
- (B) the person knew or recklessly failed to know that the person was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

- (A) the person knew or recklessly failed to know that the person was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person.

**(d) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:**

**(1) a Class D felony if the person knew or recklessly failed to know that the person was infected with:**

- (A) hepatitis B;**
- (B) HIV; or**
- (C) tuberculosis;**

**(2) a Class C felony if:**

- (A) the person knew or recklessly failed to know that the person was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or**
- (B) the person knew or recklessly failed to know that the person was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and**

**(3) a Class B felony if:**

- (A) the person knew or recklessly failed to know that the person was infected with HIV; and**
- (B) the offense results in the transmission of HIV to the other person.**

SECTION 2. IC 35-45-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

**Chapter 16. Malicious Mischief**



1       **Sec. 1. (a) As used in this chapter, "HIV" refers to the human**  
 2       **immunodeficiency virus.**

3       **(b) The term includes acquired immune deficiency syndrome**  
 4       **(AIDS) and AIDS related complex.**

5       **Sec. 2. (a) A person who recklessly, knowingly, or intentionally**  
 6       **places:**

- 7           (1) blood;
- 8           (2) semen;
- 9           (3) urine; or
- 10          (4) fecal waste;

11       **in a location with the intent that another person will involuntarily**  
 12       **touch the blood, semen, urine, or fecal waste, commits malicious**  
 13       **mischief, a Class B misdemeanor.**

14       **(b) An offense described in subsection (a) is a:**

15           **(1) Class D felony if the person knew or recklessly failed to**  
 16           **know that the blood, urine, or waste was infected with:**

- 17               (A) hepatitis B;
- 18               (B) HIV; or
- 19               (C) tuberculosis;

20           **(2) Class C felony if:**

21               (A) the person knew or recklessly failed to know that the  
 22               blood, urine, or waste was infected with hepatitis B and the  
 23               offense results in the transmission of hepatitis B to the  
 24               other person; or

25               (B) the person knew or recklessly failed to know that the  
 26               waste was infected with tuberculosis and the offense results  
 27               in the transmission of tuberculosis to the other person; and

28           **(3) Class B felony if:**

29               (A) the person knew or recklessly failed to know that the  
 30               waste was infected with HIV; and

31               (B) the offense results in the transmission of HIV to the  
 32               other person.

33       **SECTION 3. IC 35-50-5-3 IS AMENDED TO READ AS**  
 34       **FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as**  
 35       **provided in subsection (i), in addition to any sentence imposed under**  
 36       **this article for a felony or misdemeanor, the court may, as a condition**  
 37       **of probation or without placing the person on probation, order the**  
 38       **person to make restitution to the victim of the crime, the victim's estate,**  
 39       **or the family of a victim who is deceased. The court shall base its**  
 40       **restitution order upon a consideration of:**

41           (1) property damages of the victim incurred as a result of the  
 42           crime, based on the actual cost of repair (or replacement if repair

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is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

**(3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;**

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

~~(4)~~ (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8.

The victim services division of the Indiana criminal justice institute shall deposit the restitution received under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by

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1 IC 33-17-2-3. The clerk shall also notify the department of insurance  
2 of an order of restitution under subsection (i).

3 (e) An order of restitution under subsection (a) or (i) does not bar a  
4 civil action for:

5 (1) damages that the court did not require the person to pay to the  
6 victim under the restitution order but arise from an injury or  
7 property damage that is the basis of restitution ordered by the  
8 court; and

9 (2) other damages suffered by the victim.

10 (f) Regardless of whether restitution is required under subsection (a)  
11 as a condition of probation or other sentence, the restitution order is not  
12 discharged by the completion of any probationary period or other  
13 sentence imposed for a felony or misdemeanor.

14 (g) A restitution order under subsection (a) or (i) is not discharged  
15 by the liquidation of a person's estate by a receiver under IC 34-48-1,  
16 IC 34-48-4, IC 34-48-5, and IC 34-48-6 (or IC 34-1-12 and IC 34-2-7  
17 before their repeal).

18 (h) The attorney general may pursue restitution ordered by the court  
19 under subsections (a) and (c) on behalf of the victim services division  
20 of the Indiana criminal justice institute established under IC 5-2-6-8.

21 (i) The court may order the person convicted of an offense under  
22 IC 35-43-9 to make restitution to the victim of the crime. The court  
23 shall base its restitution order upon a consideration of the amount of  
24 money that the convicted person converted, misappropriated, or  
25 received, or for which the convicted person conspired. The restitution  
26 order issued for a violation of IC 35-43-9 must comply with  
27 subsections (b), (d), (e), and (g), and is not discharged by the  
28 completion of any probationary period or other sentence imposed for  
29 a violation of IC 35-43-9.

30 **SECTION 4. [EFFECTIVE JULY 1, 2002] IC 35-42-2-6, as**  
31 **amended by this act, and IC 35-45-16, as added by this act, apply**  
32 **only to crimes committed after June 30, 2002.**

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